

Consent Decree 7:16-cv-00462-GEC
United States, et. al. vs. Southern Coal Corporation & Affiliates
Quarterly Report for period ending December 31, 2018
On behalf of Southern Coal Corporation & Affiliates

As per the Consent Decree between the United States of America, the State of Alabama, the Attorney General of Alabama, Alabama Department of Environmental Management, the Commonwealth of Kentucky, Energy and Environment Cabinet, the State of Tennessee, the Attorney General and Reporter of Tennessee, and the Commonwealth of Virginia, and Southern Coal Corporation, Justice Coal of Alabama, LLC, A & G Coal Corporation, Four Star Resources LLC, Infinity Energy, Inc., Kentucky Fuel Corporation, Sequoia Energy, LLC, Virginia Fuel Corporation, National Coal, LLC, Premium Coal Company, Incorporated, S and H Mining Inc., Airway Resources, L.L.C., Baden Reclamation Company, Black River Coal, LLC, Chestnut Land Holdings, LLC, Meg-Lynn Land Company, Inc., Nine Mile Mining, Inc., Cane Patch Mining Co., Inc., Bluestone Resources, Inc., Dynamic Energy, Inc., Greenthorn, LLC, Justice Highwall Mining Inc., National Resources, Inc., Nufac Mining Company, Inc., Pay Car Mining, Inc., Second Sterling Corp., and Newgate Development of Beckley LLC, the following quarterly report is provided (capitalized terms herein shall have the meanings ascribed to them in the Consent Decree):

A. Information Regarding Any CWA Violation

(i) **Summary of Effluent Limit Violations for 1st Quarter 2019**

- There were One hundred and thirty-seven (137) Effluent Limit Violations on the associated NPDES permits for the facilities. These violations consisted of seventy-seven (77) Daily Violations and sixty (60) Monthly Violations. Fifty-two (52) of the Daily Violations were in-compliance in under 72 hours and did not result in category violations. Ten (10) of the Daily Violations were Category 1 violations, and fifteen (15) were Category 2 violations. Thirty-one (31) of the Monthly Violations were Category 1 violations, and there were twenty-nine (29) Category 2 violations. See **Table 1**.
- There were fifty-four (54) Outlets with consecutive Effluent Limit Violations of the same pollutant parameter. See **Table 1**.
- There were sixteen (16) Outlets with Persistent Noncompliance Issues (three (3) or more Effluent Limit Violations of the same parameter in the preceding 12-month period). See **Table 2**.

(ii) Summary of Failure to Sample Violations for 1st Quarter 2019

- There may have been Failure to Sample Events that occurred in 1st Quarter 2019. We are investigating these events further and will report findings and associated penalties in the next Quarterly Report.

(iii) Summary of Stipulated Penalties

- The total amount of Stipulated Penalties owed for the period is three hundred and twenty-three thousand dollars (\$323,000.00). See **Table 1**.
- In past Quarterly Reports (1st, 3rd and 4th quarters 2018) Persistent Non-Compliance was over calculated. Therefore, there is a seventy-eight thousand (\$78,000.00) credit that is being applied to 1st Quarter 2019. See **Table 1** and **Table 3**.
- The total amount of Stipulated Penalties owed for the period including the above-mentioned credit is three two hundred and forty-eight thousand dollars (\$248,000.00). See **Table 1**.

Stipulated Penalty Summary - 1st Quarter 2019

Type	Total #	Total # of Same Consecutive Exceedance	Total # of 3+ of Same Exceedance in Preceding 12 Month Period	Total # of Category 1 Violations	Total # of Category 2 Violations	Associated Stipulated Penalty	Additional Penalty for Persistent Non-Compliance
Daily Violation	77	25	9	10	15	\$ 77,500.00	\$ 9,000.00
Monthly Violation	60	29	7	31	29	\$223,500.00	\$ 14,000.00
Quarterly Violation						\$ -	\$ -
Failure to Sample		0	N/A			\$ -	N/A
Total Violations	137	54	16	41	44	\$	324,000.00

Non-Compliance with Consent Decree 1st Quarter 2019

Date Range	Start Date	End Date	# of Days	Associated Stipulated Penalty	Details of Non-Compliance
1st - 14th day	03/30/19	03/31/19	2	\$ 2,000.00	Laboratories withheld data from database. Per section VII, paragraph 49 of the Consent Decree all laboratories must provide electronic transmittal of all DMR Sample results to the Database within 48 hours of completion of analysis.
Total Non-Compliance with Consent Decree			2	\$	2,000.00
Total Stipulated Penalties 1st Quarter 2018:					
					\$ 326,000.00
Credit from 4th, 3rd, and 1st Quarter 2018 Overpaid WV Persistent Non-Compliance Stipulated Penalties					
					\$ (78,000.00)
Total Stipulated Penalties Due for 1st Quarter 2018:					
					\$ 248,000.00

*For the purposes of this document, a blank cell represents 0 violations.

Table 1.

Outlets with Persistent Non-Compliance - 1st Quarter 2019									
NPDES Permit	SMCRA Permit	Outlet	Sample Date	Notification Date	Parameter	Result	Limit	Type	Category
WV1006304	S007282	003	01/14/19	02/08/19	Total Selenium	5.8000	4.7000	Monthly	1
WV1006304	S007282	003	03/26/19	04/15/19	Total Selenium	5.3000	4.7000	Monthly	1
Exceedances from Preceding 12 Months									
WV1006304	S007282	003	04/12/18	05/15/18	Total Selenium	5.4650	4.7000	Monthly	1
WV1006304	S007282	003	06/11/18	07/18/18	Total Selenium	4.7150	4.7000	Monthly	1

Outlets with Persistent Non-Compliance - 1st Quarter 2019

NPDES Permit	SMCRA Permit	Outlet	Sample Date	Notification Date	Parameter	Result	Limit	Type	Category
NPDES Permit	SMCRA Permit	Outlet	Sample Date	Notification Date	Parameter	Result	Limit	Type	Category
WV1018965	S400900	004	02/22/19	03/11/19	Total Aluminum	0.3100	0.1400	Daily	N/A
WV1018965	S400900	004	03/04/19	03/21/19	Total Aluminum	0.4500	0.1400	Daily	1
WV1018965	S400900	004	03/18/19	04/04/19	Total Aluminum	0.3900	0.1400	Daily	N/A
WV1018965	S400900	004	03/24/19	04/15/19	Total Aluminum	0.1900	0.1400	Daily	1
Exceedances from Preceding 12 Months									
WV1018965	S400900	004	11/08/18	11/09/18	Total Aluminum	0.2180	0.1400	Daily	N/A
WV1018965	S400900	004	09/27/18	09/28/18	Total Aluminum	0.2710	0.1400	Daily	N/A
WV1018965	S400900	004	05/24/18	05/29/18	Total Aluminum	0.1540	0.1400	Daily	1
WV1018965	S400900	004	06/25/18	06/27/18	Total Aluminum	0.1730	0.1400	Daily	N/A
WV1018965	S400900	004	03/27/18	03/29/18	Total Aluminum	0.1650	0.1400	Daily	N/A

Outlets with Persistent Non-Compliance - 1st Quarter 2019

NPDES Permit	SMCRA Permit	Outlet	Sample Date	Notification Date	Parameter	Result	Limit	Type	Category
NPDES Permit	SMCRA Permit	Outlet	Sample Date	Notification Date	Parameter	Result	Limit	Type	Category
WV1018965	S400900	005	02/22/19	04/02/19	Total Aluminum	0.1253	0.0800	Monthly	1
WV1018965	S400900	005	03/18/19	04/15/19	Total Aluminum	0.2633	0.0800	Monthly	2
Exceedances from Preceding 12 Months									
WV1018965	S400900	005	11/28/18	12/13/18	Total Aluminum	0.1740	0.0800	Monthly	1
WV1018965	S400900	005	09/30/18	10/10/18	Total Aluminum	0.1577	0.0800	Monthly	1
WV1018965	S400900	005	06/29/18	07/18/18	Total Aluminum	0.0866	0.0800	Monthly	1

Outlets with Persistent Non-Compliance - 1st Quarter 2019

NPDES Permit	SMCRA Permit	Outlet	Sample Date	Notification Date	Parameter	Result	Limit	Type	Category
NPDES Permit	SMCRA Permit	Outlet	Sample Date	Notification Date	Parameter	Result	Limit	Type	Category
WV1018965	S400900	007	03/04/19	03/21/19	Total Aluminum	0.7100	0.1400	Daily	1
WV1018965	S400900	007	02/22/19	03/11/19	Total Aluminum	0.1500	0.1400	Daily	N/A
WV1018965	S400900	007	03/18/19	04/04/19	Total Aluminum	0.2400	0.1400	Daily	2
WV1018965	S400900	007	03/13/19	04/15/19	Total Aluminum	0.3200	0.1400	Daily	2
WV1018965	S400900	007	03/24/19	04/15/19	Total Aluminum	0.1700	0.1400	Daily	2
Exceedances from Preceding 12 Months									
WV1018965	S400900	007	10/03/18	10/04/18	Total Aluminum	0.2190	0.1400	Daily	N/A
WV1018965	S400900	007	11/05/18	11/06/18	Total Aluminum	0.2030	0.1400	Daily	N/A
WV1018965	S400900	007	11/07/18	11/08/18	Total Aluminum	0.2380	0.1400	Daily	1
WV1018965	S400900	007	12/04/18	12/06/18	Total Aluminum	0.1540	0.1400	Daily	N/A
WV1018965	S400900	007	12/07/18	12/10/18	Total Aluminum	0.2390	0.1400	Daily	1
WV1018965	S400900	007	08/21/18	08/22/18	Total Aluminum	0.1410	0.1400	Daily	N/A
WV1018965	S400900	007	09/19/18	09/20/18	Total Aluminum	0.1440	0.1400	Daily	N/A
WV1018965	S400900	007	01/03/18	01/05/18	Total Aluminum	0.2000	0.1400	Daily	N/A
WV1018965	S400900	007	02/06/18	02/12/18	Total Aluminum	0.3690	0.1400	Daily	N/A
WV1018965	S400900	007	02/21/18	02/23/18	Total Aluminum	0.1730	0.1400	Daily	N/A

Outlets with Persistent Non-Compliance - 1st Quarter 2019

NPDES Permit	SMCRA Permit	Outlet	Sample Date	Notification Date	Parameter	Result	Limit	Type	Category
NPDES Permit	SMCRA Permit	Outlet	Sample Date	Notification Date	Parameter	Result	Limit	Type	Category
WV1018965	S400900	008	02/22/19	03/11/19	Total Aluminum	0.4300	0.1400	Daily	2
WV1018965	S400900	008	03/04/19	03/21/19	Total Aluminum	0.6300	0.1400	Daily	2
WV1018965	S400900	008	02/09/19	03/28/19	Total Aluminum	0.6300	0.1400	Daily	N/A
WV1018965	S400900	008	03/18/19	04/04/19	Total Aluminum	0.4000	0.1400	Daily	N/A
WV1018965	S400900	008	03/24/19	04/15/19	Total Aluminum	0.1800	0.1400	Daily	1

Outlets with Persistent Non-Compliance - 1st Quarter 2019

NPDES Permit	SMCRA Permit	Outlet	Sample Date	Notification Date	Parameter	Result	Limit	Type	Category
NPDES Permit	SMCRA Permit	Outlet	Sample Date	Notification Date	Parameter	Result	Limit	Type	Category
WV1018965	S400900	010	02/22/19	03/11/19	Total Aluminum	0.3800	0.1400	Daily	2
WV1018965	S400900	010	03/04/19	03/21/19	Total Aluminum	0.2400	0.1400	Daily	2
WV1018965	S400900	010	02/09/19	03/28/19	Total Aluminum	0.4500	0.1400	Daily	N/A
WV1018965	S400900	010	03/21/19	04/05/19	Total Aluminum	0.4300	0.1400	Daily	N/A
WV1018965	S400900	010	03/24/19	04/15/19	Total Aluminum	0.4300	0.1400	Daily	1
WV1018965	S400900	010	02/22/19	04/02/19	Total Aluminum	0.2813	0.0800	Monthly	1
WV1018965	S400900	010	03/21/19	04/15/19	Total Aluminum	0.2875	0.0800	Monthly	2
Exceedances from Preceding 12 Months									
WV1018965	S400900	010	11/08/18	11/09/18	Total Aluminum	0.1450	0.1400	Daily	N/A
WV1018965	S400900	010	07/09/18	07/11/18	Total Aluminum	0.2570	0.1400	Daily	N/A
WV1018965	S400900	010	07/23/18	07/25/18	Total Aluminum	0.2890	0.1400	Daily	N/A
WV1018965	S400900	010	08/08/18	08/09/18	Total Aluminum	0.5300	0.1400	Daily	N/A
WV1018965	S400900	010	08/23/18	08/24/18	Total Aluminum	0.2710	0.1400	Daily	N/A
WV1018965	S400900	010	09/27/18	09/28/18	Total Aluminum	0.6810	0.1400	Daily	N/A
WV1018965	S400900	010	05/14/18	05/16/18	Total Aluminum	0.1440	0.1400	Daily	N/A
WV1018965	S400900	010	06/25/18	06/27/18	Total Aluminum	0.2540	0.1400	Daily	N/A
WV1018965	S400900	010	02/13/18	02/15/18	Total Aluminum	0.4100	0.1400	Daily	N/A
WV1018965	S400900	010	03/27/18	03/29/18	Total Aluminum	0.1480	0.1400	Daily	N/A
WV1018965	S400900	010	11/28/18	12/13/18	Total Aluminum	0.0863	0.0800	Monthly	1
WV1018965	S400900	010	07/30/18	08/06/18	Total Aluminum	0.0990	0.0800	Monthly	2

Outlets with Persistent Non-Compliance - 1st Quarter 2019

NPDES Permit	SMCRA Permit	Outlet	Sample Date	Notification Date	Parameter	Result	Limit	Type	Category
WV1018965	S400900	010	08/29/18	09/11/18	Total Aluminum	0.1086	0.0800	Monthly	2
WV1018965	S400900	010	09/30/18	10/10/18	Total Aluminum	0.2343	0.0800	Monthly	2
WV1018965	S400900	010	06/29/18	07/18/18	Total Aluminum	0.0885	0.0800	Monthly	1

Table 2.

Credit from 1st, 3rd, and 4th Quarterly Reports for Overpayment on Outlets with Persistent Non-Compliance

NPDES Permit	SMCRA Permit	Outlet	Sample Date	Notification Date	Parameter	Result	Limit	Type	Category
WV1006304	S007282	005	12/13/18	01/12/19	Total Selenium	5.6100	4.7000	Monthly	2
WV1006304	S007282	005	11/12/18	12/13/18	Total Selenium	6.2000	4.7000	Monthly	2
WV1006304	S007282	005	10/12/18	11/09/18	Total Selenium	6.1300	4.7000	Monthly	2
WV1006304	S007282	006	12/13/18	01/12/19	Total Selenium	5.4400	4.7000	Monthly	2
WV1006304	S007282	006	10/12/18	11/09/18	Total Selenium	5.7900	4.7000	Monthly	2
WV1006304	S007282	006	11/12/18	12/13/18	Total Selenium	6.2450	4.7000	Monthly	2
WV1006304	S007282	007	10/18/18	11/09/18	Total Selenium	8.8825	4.7000	Monthly	2
WV1006304	S007282	007	11/12/18	12/13/18	Total Selenium	10.2200	4.7000	Monthly	2
WV1006304	S007282	007	12/15/18	01/12/19	Total Selenium	9.7400	4.7000	Monthly	2
WV1006304	S007282	008	10/18/18	11/09/18	Total Selenium	9.4129	4.7000	Monthly	2
WV1006304	S007282	008	11/12/18	12/13/18	Total Selenium	8.6733	4.7000	Monthly	2
WV1006304	S007282	008	12/15/18	01/12/19	Total Selenium	8.0833	4.7000	Monthly	2
WV1018698	U401398	001	10/18/18	11/09/18	Total Aluminum	0.5575	0.0430	Monthly	2
WV1018965	S400900	004	12/26/2018	01/12/19	Total Aluminum	0.1600	0.0800	Monthly	2
WV1018965	S400900	007	12/11/18	01/12/19	Total Aluminum	0.1285	0.0800	Monthly	2
WV1024159	U402790, U402890	003	10/28/18	11/09/18	Total Aluminum	0.4344	0.4300	Monthly	2
WV1006304	S007282	007	10/01/18	10/02/18	Total Selenium	12.7800	8.2000	Daily	2
WV1006304	S007282	007	10/03/18	10/04/18	Total Selenium	10.6800	8.2000	Daily	2
WV1006304	S007282	007	10/13/18	10/15/18	Total Selenium	9.0400	8.2000	Daily	2
WV1006304	S007282	007	10/16/18	10/17/18	Total Selenium	8.5500	8.2000	Daily	2
WV1006304	S007282	007	12/03/18	12/06/18	Total Selenium	11.2100	8.2000	Daily	2
WV1006304	S007282	007	12/13/18	12/14/18	Total Selenium	12.4500	8.2000	Daily	2
WV1006304	S007282	008	10/18/18	10/22/18	Total Selenium	11.8300	8.2000	Daily	2
WV1006304	S007282	008	11/01/18	11/05/18	Total Selenium	11.7200	8.2000	Daily	2
WV1006304	S007282	008	12/03/18	12/06/18	Total Selenium	9.2800	8.2000	Daily	2
WV1006304	S007282	008	12/13/18	12/14/18	Total Selenium	9.7700	8.2000	Daily	2
WV1006304	S007282	005	08/18/18	09/11/18	Total Selenium	6.4200	4.7000	Monthly	2
WV1006304	S007282	005	09/18/18	10/10/18	Total Selenium	5.9550	4.7000	Monthly	2
WV1006304	S007282	006	08/18/18	09/11/18	Total Selenium	5.6225	4.7000	Monthly	2
WV1006304	S007282	006	09/18/18	10/10/18	Total Selenium	6.0500	4.7000	Monthly	2
WV1006304	S007282	007	07/12/18	07/16/18	Total Selenium	11.6300	8.2000	Daily	2
WV1006304	S007282	007	08/13/18	08/15/18	Total Selenium	14.2300	8.2000	Daily	2
WV1006304	S007282	007	08/16/18	08/17/18	Total Selenium	10.9000	8.2000	Daily	2
WV1006304	S007282	007	09/20/18	09/21/18	Total Selenium	8.4400	8.2000	Daily	2
WV1006304	S007282	007	08/18/18	09/11/18	Total Selenium	10.1300	4.7000	Monthly	2
WV1006304	S007282	007	09/20/18	10/10/18	Total Selenium	10.4460	4.7000	Monthly	2
WV1006304	S007282	008	08/13/18	08/15/18	Total Selenium	11.5400	8.2000	Daily	2
WV1006304	S007282	008	08/16/18	08/17/18	Total Selenium	9.6400	8.2000	Daily	2
WV1006304	S007282	008	08/18/18	09/11/18	Total Selenium	9.8575	4.7000	Monthly	2
WV1006304	S007282	008	09/20/18	10/10/18	Total Selenium	9.5600	4.7000	Monthly	2
WV1018965	S400900	010	07/30/18	08/06/18	Total Aluminum	0.0990	0.0800	Monthly	2
WV1018965	S400900	010	08/29/18	09/11/18	Total Aluminum	0.1086	0.0800	Monthly	2
WV1018965	S400900	010	09/30/18	10/10/18	Total Aluminum	0.2343	0.0800	Monthly	2
WV1026488	S301411	007	02/21/18	03/08/18	Total Aluminum	0.0800	0.1680	Monthly	2
WV1026488	S301411	007	03/29/18	04/09/18	Total Aluminum	0.0800	0.0870	Monthly	2
WV1026488	S301411	007	02/21/18	03/08/18	Total Aluminum	0.0800	0.1680	Monthly	2
WV1026488	S301411	007	03/29/18	04/09/18	Total Aluminum	0.0800	0.0870	Monthly	2

Table 3.

(iv) Summary of Additional CWA/SMCRA Violations

- See **Attachment A.** For more details.

(v) Summary of Remedial Steps Taken or Planned for Violations in (i) and (ii) above

During the period, the following remedial actions were initiated to address the Effluent Limit Violations identified above:

- Daily monitoring began the date of the Violation notification.
- The pond associated with the Outlet was cleaned.
- Treatment was applied as needed.
- The Outlet was brought back into compliance.
- See **Attachment B.** and **Attachment C.** for details specific to each effluent limit violation.

During the period, the following remedial actions were initiated to address the Failure to Sample Violations identified above:

- There may have been Failure to Sample Events that occurred in 1st Quarter 2019. We are investigating these events further and will report findings and associated penalties in the next Quarterly Report.

During the period, the following remedial actions were initiated to address the Persistent Non-compliances identified above:

- Daily monitoring began the date of the Violation notification.
- In process of consulting with CWA compliance and treatment systems expert.
- See **Table 2.** For details specific to each persistent non-compliance.

During the period, the following remedial actions were initiated to address the CWA/SMCRA Violations:

- See **Attachment A.** for specific violations and remedial actions taken.

(vi) Copy of the Violation Database Entries for the relevant quarter

- See **Attachment A.** for 1st Quarter 2019 CWA/SMCRA Violations
- See **Attachment B.** for 1st Quarter 2019 Effluent Limit Violations
- See **Attachment C.** for responses to 1st Quarter 2019 Effluent Limit Violations
- See **Attachment D.** for 09/30/18 – 09/30/19 Effluent Limit and Failure to Sample Violations
- Copies of All Violation Documents (CWA/SMCRA, Effluent Limit, and Failure to Sample) and Completed Environmental Audits and Treatment System Audits are located on the publicly available database for Southern Coal Corporation.
 - www.southerncoalcorporation.droppages.com

B. Summary of Incomplete Audit Responses

- No Incomplete Audit Responses occurred 1st Quarter 2019.
- The EMS Audit Response and Action Plan was completed and submitted with the 4th quarter 2017 quarterly report.
 - EPA's comments on EMS Audit Response and Action Plan have not been received.
 - Once EPA comments are received, a response will be submitted within 30 days from receipt date.

C. Documentation of Training Sessions Pursuant to Paragraph 60

- Annual Consent Decree Training for 2019 will be conducted in 4th Quarter 2019.

D. Certification of Material Conformance

I hereby certify that activities at Southern Coal Corporation and Affiliates facilities are in material conformance with the elements of the approved EMS manual relating to the Applicable Law addressed by the Consent Decree.

E. Status of Consent Decree Implementation

See **Attachment E.** SCC Consent Decree Obligation Tracking

F. Other Non-Compliances with This Consent Decree

- There were two (2) instances of Non-Compliance with Consent Decree that occurred for a combined total of twenty-four (24) days during 1st Quarter 2019. Please see **Table 1** for the associated stipulated penalties. Effluent Water Data was not submitted electronically by contracted laboratories to Southern Coal Corporation within 48 hours of completion of analysis during the following dates:
 - March 30, 2019 – March 31, 2019 (2 Days of Non-Compliance with Consent Decree in 1st -14th day penalty range)
- No Instances of Non-Compliance with Reporting Requirements in 1st Quarter 2019.
- There were no instances of Non-Compliance with Outlet Inspection Requirements in 1st Quarter 2019.
 - However, it has come to our attention that some Outfall Inspections may be missing. We are still conducting a review of all Outfall Inspections and will report any discrepancies found in the next Quarterly Report.

G. Decree Violation Subject to an Unresolved Force Majeure Claim

Not applicable.

H. Certification Pursuant to Paragraph 79

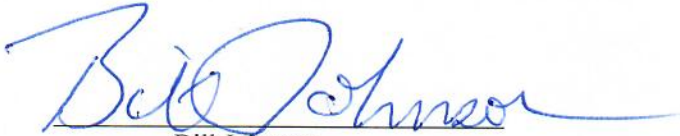
I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.



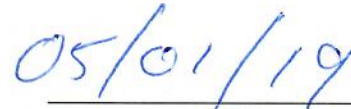
Mark Wooten
Chief Engineer

Digitally signed by Mark S Wooten
Date: 2019.05.01 00:10:08 -04'00'

Date



Bill Johnson
Chief Engineer



Date